

GEORGE M. RANALLI, ESQ.
Nevada Bar No. 5748
JAMES F. HOLTZ, ESQ.
Nevada Bar No. 8119
VICKI DRISCOLL, ESQ.
Nevada Bar No. 3939
RANALLI ZANIEL FOWLER & MORAN, LLC
2400 W. Horizon Ridge Parkway
Henderson, Nevada 89052
ranalliservice@ranallilawyers.com
Attorneys for Defendant,
WALGREEN CO.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

PETER SCHMITT,)
)
Plaintiff,) CASE NO.:
)
vs.)
)
WALGREEN CO.; DOES 1 through 100;)
and ROE CORPORATIONS 101 through)
200,)
)
Defendants.)

NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C.
§ 1441 (B) (DIVERSITY)

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant WALGREEN CO. hereby removes to this Court the state court action described below.

1. On August 4, 2020, an action was commenced in the District Court for Clark County, Nevada, entitled PETER SCHMITT v. WALGREEN CO., DOES I through 100; ROE CORPORATIONS 101 through 200, as Case No: A-20-818986-C. A copy of the Complaint and Summons are attached hereto as **Exhibits A and B.**

1 2. Defendant WALGREEN CO. received a copy of said Complaint
2 on August 5, 2020, when Defendant's agent accepted service of
3 said Summons and Complaint on its behalf. A copy of the Proof
4 of Service is attached hereto as **Exhibit C**.

5 3. This is a civil action of which this Court has
6 original jurisdiction under 28 U.S.C. § 1332, and is one which
7 may be removed to this Court by Defendant pursuant to the
8 provisions of 28 U.S.C. § 1441(b) in that it is a civil action
9 between citizens of different states and the matter in
10 controversy exceeds the sum of \$75,000, exclusive of interest
11 and costs.

12 4. Plaintiff is a citizen of the State of Nevada.
13 Defendant WALGREEN CO. was at the time of filing this action,
14 and still is, a corporation incorporated under the laws of the
15 State of Illinois, having its principal place of business at
16 Deerfield, Illinois.

17 5. On August 24, 2020, Defendant WALGREEN CO. filed its
18 Initial Appearance Fee Disclosure, Answer to Plaintiff's
19 Complaint and Demand for Jury Trial. A copy of the Initial
20 Appearance Fee Disclosure, Answer to Plaintiff's Complaint and
21 Demand for Jury Trial are attached as **Exhibits D, E and F**.

22 6. On September 19, 2020, Plaintiff filed a Petition for
23 Exemption from Arbitration asserting that Plaintiff has incurred
24 medical expenses of \$57,378.42 with additional billings not yet

1 available for four providers, so it is reasonable to conclude
 2 that the amount in controversy exceeds \$75,000. A copy of the
 3 Petition for Exemption from Arbitration is attached hereto as
 4 **Exhibit G.**

5 7. Removal is timely as Defendant WALGREEN CO. filed this
 6 notice of removal within thirty days of Plaintiff filing his
 7 Petition for Exemption from Arbitration, at which time Walgreen
 8 Co. learned of the amount in controversy, and within one year of
 9 the Complaint's filing. 28 U.S.C. § 1446(b). (See Harris vs.
 10 Bankers Life & Cas. Co. 425 F.3d 689, 694 (9th Cir. 2005)).

11 Dated this 21st day of September, 2020.

12 **RANALLI ZANIEL FOWLER & MORAN, LLC**

13 */s/ Vicki Driscoll*

14 **GEORGE M. RANALLI, ESQ.**

Nevada Bar No. 5748

JAMES F. HOLTZ, ESQ.

Nevada Bar No. 8119

VICKI DRISCOLL, ESQ.

Nevada Bar No. 3939

Attorneys for Defendant,
 17 WALGREEN CO.

CERTIFICATE VIA CM/ECF

Pursuant to FRCP 5, I hereby certify that I am an employee of RANALLI ZANIEL FOWLER & MORAN, LLC, and that on the 21st day of September, 2020 I caused to be served via CM/ECF a true and correct copy of the document described herein.

Document Served:

NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441 (B) (DIVERSITY)

Scott L. Poisson, Esq.
Ryan Kerbow, Esq.
BERNSTEIN & POISSON
320 S. Jones Blvd.
Las Vegas, Nevada 89107
Attorney for Plaintiff
VIA ELECTRONIC SERVICE

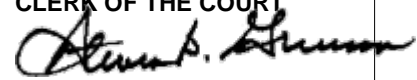
/s/ Vicki Perez

**An Employee of
RANALLI ZANIEL FOWLER & MORAN, LLC**

RANALLI ZANIEL FOWLER & MORAN, LLC
2400 WEST HORIZON RIDGE PARKWAY
HENDERSON, NEVADA 89052
TELEPHONE: (702) 477-7774 FAX: (702) 477-7778

EXHIBIT A

Electronically Filed
8/4/2020 10:20 AM
Steven D. Grierson
CLERK OF THE COURT


COMP

Scott L. Poisson, Esq.
Nevada Bar No.: 10188
Ryan Kerbow, Esq.
Nevada Bar No.: 11403
BERNSTEIN & POISSON
320 S. Jones Blvd
Las Vegas, NV 89107
Telephone: (702) 256-4566
Facsimile: (702) 256-6280
Email: ryan@vegashurt.com
Attorneys for Plaintiff

CASE NO: A-20-818986-C
Department 32

**DISTRICT COURT
CLARK COUNTY, NEVADA**

PETER SCHMITT,

Plaintiff,

vs.

WALGREEN CO.; DOES 1 through 100;
and ROE CORPORATIONS 101 through
200,

Defendant.

CASE NO.:
DEPT. NO.:

COMPLAINT

Plaintiff, by and through his attorneys of record of the law office of BERNSTEIN & POISSON, hereby files this Complaint and alleges against the above-named Defendants, and each of them, as follows:

GENERAL ALLEGATIONS

1. At all times material herein, Plaintiff was and is a resident of Clark County, Nevada
2. At all times material herein, Defendant owned and operated the Walgreens store located at 3480 S Jones Blvd, Las Vegas, Nevada 89146.
3. The subject fall occurred in Clark County, Nevada.
4. Upon information and belief, at all times material herein, Doe and Roe Defendants 101 through 200 were legal entities/residents of Clark County, Nevada, and authorized to do business by the State of Nevada. Furthermore, said Doe and Roe Defendants were employees, agents, or servants of Defendants, and each of them, and functioned and assisted in the operation,

control and/or management of said premises.

5. The true names and capacities, whether individual, corporate, limited Liability Company; partnership; or otherwise of Defendants DOES 1 through 10 and ROE CORPORATIONS 1 through 10, inclusive, are unknown to Plaintiff who therefore sues said Defendants by such fictitious names. On information and belief, Plaintiff alleges that the Defendants, and each of them, designated herein as a DOE INDIVIDUALS or ROE CORPORATION were responsible in some manner for the injuries sustained by the Plaintiff, on or about September 1, 2018 resulting from the below stated fall accident; and further that certain, without limitation, employees employed and/or engaged by said Defendants; or other patrons of said business; knew of or should have known of or caused a dangerous condition to be on the sidewalk of the Defendant's property resulting in Plaintiff's personal injury herein; and are therefore liable for all damages due to Plaintiff as alleged herein.

6. Plaintiff will ask leave of court to amend this Complaint to insert the true names and capacities when the same is ascertained and to join such Defendants in this action. DOE DEFENDANTS 1, 2, and 3 are the unknown legal entities who own, operate, and manage the location of the subject incident. DOE DEFENDANT 4 is the unknown contractor or entity hired or contracted by Defendant to maintain the subject parking lot.

CAUSES OF ACTION

A. FIRST CLAIM FOR RELIEF: NEGLIGENCE/PREMISE LIABILITY

7. Upon information and belief, on or about September 1, 2018, Plaintiff was lawfully on the Defendant's premises as a patron when he slipped and fell due to sand and/or a cat litter type substance that was spread the asphalt in a parking space near the sidewalk in front of the Walgreens store.

8. Upon information and belief, Defendant had a duty to supervise, inspect, and maintain said premises in a reasonably safe and suitable condition for its patrons, guests, invitees and others; and further to take reasonable precautions to avoid/remove the presence of dangerous and/or artificial conditions on or around said premises. Defendant breached this duty of care to Plaintiff, as a result of which he slipped and fell.

9. This breach proximately caused injury and damages to Plaintiff.

10. Upon information and belief, Defendant employs persons for the purpose of maintaining its walkways in a reasonably safe and safe condition.

11. Upon information and belief, at said time and place, Defendant, despite having

1 actual notice or constructive notice of a dangerous condition on its premises and/or having created
2 the subject trip hazard, failed to enact proper safeguards and warnings to prevent serious bodily
3 injury to Plaintiff. To wit, Defendant failed to maintain the subject parking lot free from known
4 slip hazards.

5 12. Defendant's failure to remove or warn Plaintiff of the dangerous condition, and
6 further failure to hire and adequately train suitable and fit employees to maintain said property in
7 a safe and suitable manner, has directly and proximately resulted in Plaintiff's personal injury and
8 damages in excess of \$15,000.00.

**B. SECOND CLAIM FOR RELIEF: NEGLIGENT HIRING, SUPERVISION AND
FAILURE TO WARN**

9 13. Plaintiff re-alleges each of the foregoing allegations contained in paragraphs 1
10 through 12 as if fully set forth herein.

11 14. At all times material herein, Defendant's employees, agents, contractors, and/or
12 agents were acting within the course and scope of their employment with Defendant.

13 15. At all times material herein, Defendant was in control of, and responsible for
14 training, hiring, and/or screening employees/contractors working on its premises, in a way
15 designed to protect persons such as Plaintiff from harm.

16 16. Defendant breached its duty to Plaintiff in one or more of the following respects,
17 but not limited to:

- 18 a. Failing to adequately supervise employees, agents, contractors and/or subsidiaries.
- 19 b. Failing to adequately train employees, agents, contractors and/or subsidiaries.
- 20 c. Failing to adequately screen potential employees, agents, contractors and/or
21 subsidiaries before their hiring/contracting.
- 22 d. Failing to follow safety protocol.

23 17. Defendant's breach of these duties directly and proximately caused Plaintiff's
24 injuries.

25 18. As a direct and proximate result of Defendant's negligence by and through its
26 agents, employees and/or contractors as set forth, Plaintiff has sustained special damages, general
27 damages, economic damages and future damages in excess of \$15,000.00 subject to proof to trial.

28 **WHEREFORE** Plaintiff expressly reserves the right to amend this complaint at the time
of, or prior to trial, and prays for relief as follows:

Bernstein & Poisson

320 S. Jones Blvd.
Las Vegas, Nevada 89107
OFFICE: (702) 256-4566 FAX: (702) 256-6280

1. For general damages in a sum in excess of \$15,000.00;
2. For special damages in a sum in excess of \$15,000.00;
3. For attorney's fees and costs of suit incurred herein;
4. For interest at the statutory rate;
5. For such other relief as this honorable court deems appropriate.

Dated this 4th day of August 2020.

Respectfully submitted:
BERNSTEIN & POISSON

/s/ Ryan Kerbow

RYAN KERBOW, ESQ.
Nevada Bar No.: 11403
Attorneys for Plaintiff

EXHIBIT B

Electronically Issued
8/4/2020 10:21 AM

SUMM

RYAN KERBOW, ESQ.

Nevada Bar No. 11403

BERNSTEIN AND POISSON LLP

320 S. Jones Boulevard

Las Vegas, Nevada 89107

Telephone: (702) 256-4566

Facsimile: (702) 256-6280

Email: ryan@vegashurt.com

Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

PETER SCHMITT,

Plaintiff,

vs.

**WALGREEN CO.; DOES 1 through 100; and
ROE CORPORATIONS 101 through 200,**

Defendant.

Case No.: A-20-818986-C

Dept. No.:

SUMMONS

WALGREEN CO.

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST
YOU WITHOUT YOUR BEING HEARD, UNLESS YOU RESPOND WITHIN 20
DAYS. READ THE INFORMATION BELOW.**

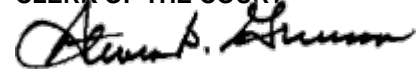
TO THE DEFENDANT: A civil Complaint has been filed by the Plaintiff against
you for the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is
served on you, exclusive of the day of the service you must do the following:

a. File with the Clerk of this Court, whose address is shown below, a formal
written response to the Complaint in accordance with the rules of the Court with the
appropriate filing fee.

EXHIBIT C

Electronically Filed
8/17/2020 9:52 AM
Steven D. Grierson
CLERK OF THE COURT



PSEER
BERNSTEIN & POISSON LLP
320 S JONES BLVD
LAS VEGAS, NV 89107
(702) 256-4566

DISTRICT COURT
CLARK COUNTY, NEVADA

PETER SCHMITT
Plaintiff

vs

WALGREEN CO.
Defendant

Case Number: A-20-818986-C

Dept:

PROOF OF SERVICE

DUSTIN GROSS, deposes and says: that at all times herein I am a citizen of the United States, over 18 years of age and not a party to nor interested in the proceeding in which this statement is made.

Affiant received a copy of the:
SUMMONS; COMPLAINT

I served the same on **08/05/2020 at 1:40 PM** to:

Defendant WALGREEN CO., BY SERVING CORPORATION SERVICE COMPANY, REGISTERED AGENT

by leaving the copies with or in the presence of **KRIS OSBORN, CORPORATE SPECIALIST**, at 112 N CURRY ST, CARSON CITY, NV 89703, pursuant to **NRS 14.020**.

Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the forgoing is true and correct.

Executed: Tuesday, August 11, 2020



DUSTIN GROSS #R-2020-09090
Battle Born Process Service
3710 Grant Drive, Ste. L
Reno, NV 89509
775-507-7188
NV PILB LIC #1876

P-1930911.01

EXHIBIT D

Alvin P. Hanson

CLARK COUNTY, NEVADA

/ / /

RANALLI ZANIEL FOWLER & MORAN, LLC
2400 WEST HORIZON RIDGE PARKWAY
HENDERSON, NEVADA 89052
TELEPHONE: (702) 477-7774 FAX: (702) 477-7778

1 DEFENDANT WALGREEN, CO.: \$223.00

2 **TOTAL FEES REMITTED:** **\$223.00**

3 Dated this 24TH day of August, 2020.

4 **RANALLI ZANIEL FOWLER & MORAN, LLC**

5 */s/ James F. Holtz*

6 **GEORGE M. RANALLI, ESQ.**

Nevada Bar No. 5748

7 **JASON ANDREW FOWLER, ESQ.**

Nevada Bar No. 8071

8 **JAMES F. HOLTZ, ESQ.**

Nevada Bar No. 8119

9 Attorneys for Defendant,
10 WALGREEN CO.

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of **RANALLI ZANIEL FOWLER & MORAN, LLC**, and that on the 24th day of August, 2020, I caused the foregoing **INITIAL APPEARANCE FEE DISCLOSURE** to be served as follows:

- ☐ by placing a true and correct copy of the same to be deposited for mailing in the US Mail at Henderson, Nevada, enclosed in a sealed envelope upon which first class postage was fully prepaid; and/or
- ☐ pursuant to EDCR 7.26, by sending it via facsimile (w/out attachments); and/or
- ☐ by hand delivery to the parties listed below; and/or
- ☒ pursuant to N.E.F.C.R. Rule 9 and Administrative Order 14-2, by sending it via electronic service:

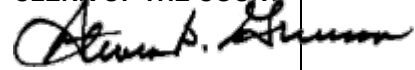
Scott L. Poisson, Esq.
Ryan Kerbow, Esq.
BERNSTEIN & POISSON
320 S. Jones Blvd.
Las Vegas, Nevada 89107
Attorney for Plaintiff
VIA ELECTRONIC SERVICE

/s/ *Donna Hicks*

An Employee of
RANALLI ZANIEL FOWLER & MORAN, LLC

EXHIBIT E

Electronically Filed
8/24/2020 10:30 PM
Steven D. Grierson
CLERK OF THE COURT



1 **ANS**

2 **GEORGE M. RANALLI, ESQ.**

3 Nevada Bar No. 5748

4 **JASON ANDREW FOWLER, ESQ.**

5 Nevada Bar No. 8071

6 **JAMES F. HOLTZ, ESQ.**

7 Nevada Bar No. 8119

8 **RANALLI ZANIEL FOWLER & MORAN, LLC**

9 2400 W. Horizon Ridge Parkway

10 Henderson, Nevada 89052

11 ranalliservice@ranalllilawyers.com

12 Attorneys for Defendant,

13 **WALGREENS CO.**

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 PETER SCHMITT,)

17 Plaintiff,)

18 vs.)

19 WALGREEN CO.; DOES 1 through 100;)
20 and ROE CORPORATIONS 101 through)
21 200,)

22 Defendants.)

CASE NO.: A-20-818986-C
DEPT. NO.: XXXII

23 **DEFENDANT WALGREEN CO.'S ANSWER TO PLAINTIFF'S COMPLAINT**

24 COMES NOW Defendant WALGREENS, CO., and answers in response
to the Complaint and the allegations contained therein as
follows:

PARTIES

1. Defendant admits the allegations of paragraph 1.

2. Defendant admits operating the Walgreens Store located
at 3480 S. Jones Blvd, Las Vegas, Nevada 89146, but has no
information or belief as to the remaining allegations contained

1 therein and therefore denies the same, of paragraph 2.

2 3. Defendant admits the subject property is located in
3 Clark County, Nevada and therefore if Plaintiff fell on the
4 property any such fall would have occurred in Clark County,
5 Nevada, but has no information or belief as to the remaining
6 allegations and on that ground denies each and every allegation
7 of paragraph 3.

8 4. Defendant has no information or belief as to the
9 allegations in paragraph 4 and on that ground denies each and
10 every allegation of said paragraph.

11 5. Defendant has no information or belief as to the
12 allegations in paragraph 5 and on that ground denies each and
13 every allegation of said paragraph.

14 6. Defendant has no information or belief as to the
15 allegations in paragraph 6 and on that ground denies each and
16 every allegation of said paragraph.

17 **CAUSES OF ACTION**

18 **FIRST CLAIM FOR RELIEF: NEGLIGENCE/PREMISES LIABILITY**

19 7. Defendant has no information or belief as to the
20 allegations in paragraph 7 and on that ground denies each and
21 every allegation of said paragraph.

22 8. In response to paragraph 8, Defendant denies each and
23 every allegation of said paragraph.

24 9. In response to paragraph 9, Defendant denies each and
every allegation of said paragraph.

///

///

1 10. Defendant has no information or belief as to the
2 allegations in paragraph 10 and on that ground denies each and
3 every allegation of said paragraph

4 11. In response to paragraph 11, Defendant denies each and
5 every allegation of said paragraph.

6 12. In response to paragraph 12, Defendant denies each and
7 every allegation of said paragraph.

8 **SECOND CLAIM FOR RELIEF**

9 **NEGLIGENT HIRING, SUPERVISION AND FAILURE TO WARN**

10 13. Defendant repeats and re-alleges each and every
11 response to each and every allegation contained in paragraphs 1
12 through 13 above as though fully set forth herein verbatim.

13 14. Defendant has no information or belief as to the
14 allegations in paragraph 14 and on that ground denies each and
15 every allegation of said paragraph.

16 15. Defendant has no information or belief as to the
17 allegations in paragraph 15 and on that ground denies each and
18 every allegation of said paragraph.

19 16. In response to paragraph 16, Defendant denies each and
20 every allegation of said paragraph.

21 16a. In response to paragraph 16a, Defendant denies each
22 and every allegation of said paragraph.

23 16b. In response to paragraph 16b, Defendant denies each
24 and every allegation of said paragraph.

16c. In response to paragraph 16c, Defendant denies each
and every allegation of said paragraph.

///

1 16d. In response to paragraph 16d, Defendant denies each
2 and every allegation of said paragraph.

3 17. In response to paragraph 17, Defendant denies each and
4 every allegation of said paragraph

5 18. In response to paragraph 18, Defendant denies each and
6 every allegation contained in said paragraph.

7 **AFFIRMATIVE DEFENSES**

8 **FIRST AFFIRMATIVE DEFENSE**

9 Plaintiff's Complaint on file herein fails to state a claim
10 against Defendants upon which relief can be granted.

11 **SECOND AFFIRMATIVE DEFENSE**

12 The incident alleged in the Complaint, and the resulting
13 damages, if any, to Plaintiff, was proximately caused or
14 contributed to by the Plaintiff's own negligence, and such
15 negligence was greater than the negligence, if any, of
16 Defendants, and/or Defendants are entitled to an offset for the
17 negligence of Plaintiff if such negligence was less than that of
18 Defendant.

19 **THIRD AFFIRMATIVE DEFENSE**

20 Defendants allege that Plaintiff has failed to mitigate his
21 damages, if any.

22 **FOURTH AFFIRMATIVE DEFENSE**

23 The occurrences referred to in the Complaint, and all
24 damages, if any, resulting there from, were caused by the acts
or omissions of third parties over whom these answering

1 Defendants had no control.

2 **FIFTH AFFIRMATIVE DEFENSE**

3 Attorney's fees are only recoverable through contract or by
4 statute and are not recoverable as damages in a lawsuit for
5 personal injury damages. Plaintiff's claims for attorney's fees
6 and costs as alleged in Plaintiff's Complaint are not
7 recoverable herein and have been improperly pled in Plaintiff's
8 Complaint. Defendants specifically reserve the right to have
9 Plaintiff's improperly pled claim for attorney's fees dismissed
10 prior to trial. Plaintiff's claims are barred by the applicable
11 statute or limitations.

12 **SIXTH AFFIRMATIVE DEFENSE**

13 An unforeseeable incapacity/sudden emergency as a bar to
14 liability in negligence are based upon the principle that one is
15 not negligent if an unforeseeable occurrence or sudden emergency
16 causes an accident and/or injury.

17 **SEVENTH AFFIRMATIVE DEFENSE**

18 If any damages are awarded to Plaintiff, they should be
19 apportioned among the Defendants according to their percentage
20 of liability and/or among the various accidents and/or pre-
21 existing conditions.

22 **EIGHTH AFFIRMATIVE DEFENSE**

23 Defendants are not joint and severally liable and are only
24 severally liable, if liable at all.

NINTH AFFIRMATIVE DEFENSE

Any hazard alleged is trivial.

TENTH AFFIRMATIVE DEFENSE

Any hazard defect was open and obvious.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs do not have a ripe cause of action.

THIRTEENTH AFFIRMATIVE DEFENSE

If any hazard or danger existed to Plaintiff for which Defendant would be responsible, Plaintiff knew of the danger or hazard and her own unreasonable conduct was the cause of any injury, be it due to a hazardous, ultra-hazardous activity or condition or otherwise.

FOURTEENTH AFFIRMATIVE DEFENSE

All of the risks and dangers involved in the factual situation described in the Complaint were open, obvious and known to Plaintiff, and by reason thereof, Plaintiff assumed such risks and dangers incident thereto.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's action is barred and/or diminished by the doctrines of consent, waiver, laches, estoppel and/or unclean hands.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's own unreasonable conduct constitutes the sole or majority of the cause for his alleged injuries.

SEVENTEENTH AFFIRMATIVE DEFENSE

The occurrences referred to in the Complaint, and all damages, if any, resulting there from, were caused by the acts or omissions of co-defendants, unnamed defendants, non-parties or third parties over whom this answering Defendant had no control.

EIGHTEENTH AFFIRMATIVE DEFENSE

These Answering Defendants, not being fully advised as to all facts and circumstances surrounding the incident complained of, hereby assert and reserve unto themselves the defenses of accord and satisfaction, arbitration and award, discharged and bankruptcy, duress, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, permit, consent, payment, release res judicata, statute of frauds, and other contract defenses including but not limited to failure of contract formation, absence of privity, Plaintiff's lack of standing, absence, lack or failure of consideration, illusory promises, absence of mutual assent, mutual mistake and/or unilateral mistake wherein Plaintiff was aware of the mistake, misrepresentation and/or fraud, failure to perform, unconscionability, improper delegation of duties and/or assignment of rights, nonoccurrence of condition precedent, excuse, and discharge by performance, impossibility, impracticability, frustration, illegality, rescission,

1 modification, novation, release, cancellation, substituted
2 contract, account stated, lapse, operation of law including but
3 not limited to running of the statute of limitations, and/or
4 occurrence of condition subsequent, consent of the Plaintiffs,
5 that Plaintiffs have granted Defendant's an easement either
6 expressly or implied in fact, that the conditions complained of
7 were so open and obvious that Plaintiffs or their predecessors
8 in interest consented to them, that any damages claimed by
9 Plaintiffs are the fault of underlying contractors, construction
10 companies, developers or laborers over whom Defendants had no
11 control or authority and any other matter constituting an
12 avoidance or affirmative defense which the further investigation
13 of this matter may prove applicable herein.

14 **NINETEENTH AFFIRMATIVE DEFENSE**

15 Any alleged hazardous condition was unknown to Defendant
16 and if it existed, had existed for such a short period of time
17 that Defendant cannot be held responsible for it.

18 **TWENTIETH AFFIRMATIVE DEFENSE**

19 Pursuant to NRCP Rule 11, as amended, all possible
20 affirmative defenses may not have been alleged herein, insofar
21 as sufficient facts were not available after reasonable inquiry
22 upon the filing of Defendants' Answer and, therefore, Defendants
23 reserve the right to amend their Answer to allege additional
24

1 affirmative defenses or withdraw certain affirmative defenses if
2 subsequent investigation warrants.

3 WHEREFORE, Defendant prays for the following:

4 1. That Plaintiff take nothing and Judgment be
5 entered in favor of Defendant Walgreens.

6 2. For attorney's fees and costs of suit herein
7 incurred; and

8 3. For such other and further relief as the court may
9 deem just and proper.

10 Dated this 24TH day of August, 2020.

RANALLI ZANIEL FOWLER & MORAN, LLC

/s/ James F. Holtz

GEORGE M. RANALLI, ESQ.

Nevada Bar No. 5748

JASON ANDREW FOWLER, ESQ.

Nevada Bar No. 8071

JAMES F. HOLTZ, ESQ.

Nevada Bar No. 8119

Attorneys for Defendant,
WALGREEN CO.

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of **RANALLI ZANIEL FOWLER & MORAN, LLC**, and that on the 24th day of September, 2020, I caused the foregoing **DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT** to be served as follows:

☐ by placing a true and correct copy of the same to be deposited for mailing in the US Mail at Henderson, Nevada, enclosed in a sealed envelope upon which first class postage was fully prepaid; and/or

☐ pursuant to EDCR 7.26, by sending it via facsimile (w/out attachments); and/or

☐ by hand delivery to the parties listed below; and/or

☒ pursuant to N.E.F.C.R. Rule 9 and Administrative Order 14-2, by sending it via electronic service:

Scott L. Poisson, Esq.
Ryan Kerbow, Esq.
BERNSTEIN & POISSON
320 S. Jones Blvd.
Las Vegas, Nevada 89107
Attorney for Plaintiff
VIA ELECTRONIC SERVICE

/s/ *Donna Hicks*

An Employee of
RANALLI ZANIEL FOWLER & MORAN, LLC

EXHIBIT F

Alvin P. Hanson

CLARK COUNTY, NEVADA

/ / /

trial of all of the issues in the above-entitled matter.

Dated this 24TH day of August, 2020.

RANALLI ZANIEL FOWLER & MORAN, LLC

/s/ James F. Holtz

GEORGE M. RANALLI, ESQ.

Nevada Bar No. 5748

JASON ANDREW FOWLER, ESQ.

Nevada Bar No. 8071

JAMES F. HOLTZ, ESQ.

Nevada Bar No. 8119

Attorneys for Defendant,
WALGREEN CO.

RANALLI ZANIEL FOWLER & MORAN, LLC
2400 WEST HORIZON RIDGE PARKWAY
HENDERSON, NEVADA 89052
TELEPHONE: (702) 477-7774 FAX: (702) 477-7778

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of **RANALLI ZANIEL FOWLER & MORAN, LLC**, and that on the 24th day of August, 2020, I caused the foregoing **DEMAND FOR JURY TRIAL** to be served as follows:

☐ by placing a true and correct copy of the same to be deposited for mailing in the US Mail at Henderson, Nevada, enclosed in a sealed envelope upon which first class postage was fully prepaid; and/or

☐ pursuant to EDCR 7.26, by sending it via facsimile (w/out attachments); and/or

☐ by hand delivery to the parties listed below; and/or

☒ pursuant to N.E.F.C.R. Rule 9 and Administrative Order 14-2, by sending it via electronic service:

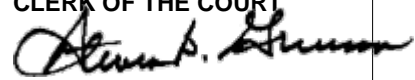
Scott L. Poisson, Esq.
Ryan Kerbow, Esq.
BERNSTEIN & POISSON
320 S. Jones Blvd.
Las Vegas, Nevada 89107
Attorney for Plaintiff
VIA ELECTRONIC SERVICE

/s/ *Donna Hicks*

An Employee of
RANALLI ZANIEL FOWLER & MORAN, LLC

EXHIBIT G

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Steven D. Grierson
CLERK OF THE COURT


EXEM

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

PETER SCHMITT,

Plaintiff,

vs.

WALGREEN CO.; DOES 1 through 100;
and ROE CORPORATIONS 101 through
200,

Defendant.

**CASE NO.: A-20-818986-C
DEPT. NO.: 32**

REQUEST FOR EXEMPTION FROM ARBITRATION

Plaintiff hereby requests the above-entitled matter be exempted from arbitration pursuant to Nevada Arbitration Rules 3 and 5, as this case involves a probable jury award in an amount which exceeds \$50,000.00. This lawsuit arises from an incident in which Plaintiff, a 77-year-old man, slipped on cat litter in a parking space of a CVS parking lot. He fell forward and struck his head against the sidewalk. He was ambulated to Spring Valley Hospital where he was treated for acute neck pain, acute head injury, and facial laceration. He has since undergone pain management, including injection therapy, for neck and low back injuries. Plaintiff's medical expenses total in excess of \$57,378.42. In light of Plaintiff's special and general damages, this case has a probable jury award greater than \$50,000.00.

MEDICAL SPECIALS

AMR

\$ 1,137.96

1	Spring Valley Hospital	\$26,545.00
2	Shadow Emergency Physicians	\$ 922.00
3	Desert Radiologists	\$ 535.03
4	Spectacle Eyecare	\$ 634.00
5	Las Vegas Radiology	\$ 8,250.00
6	Innovative Pain Care	\$14,350.43
7	Radar Medical Group	\$ 2,865.00
8	Las Vegas Neurosurgery	\$ 1,513.00
9	Desert Sunset Pain Consultants	TBD
10	Advanced Orthopedic & Sports Center	TBD
11	Cameron Medical Center	TBD
12	Fine Chiropractic Center	TBD
13	TOTAL	\$57,378.42

14 This matter has a probable jury award in excess of \$50,000.00. *Plaintiff shall supplement*
15 *with bills should the Arbitration Commissioner require same. For the sake of brevity, the*
16 *undersigned hereby certifies the disclosed medical specials.* Plaintiff respectfully moves that this
17 matter be exempted.

18 I hereby certify pursuant to NRCP 11 this case to be within the exemption(s) marked above
19 and am aware of the sanctions which may be imposed against any attorney or party who without
20 good cause or justification attempts to remove a case from the arbitration program.

21 DATED this 18th day of September, 2020.

22 BERNSTEIN & POISSON

23 /s/ Ryan Kerbow

24
25 RYAN KERBOW, ESQ.
26 Nevada Bar No. 11403
27 BERNSTEIN & POISSON
28 320 S. Jones Blvd.
Las Vegas, NV 89107
Attorneys for Plaintiff